

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**BART SHAHAN,**

**Petitioner,**

**CASE NO. 2:06-cv-160**

**JUDGE SMITH**

**MAGISTRATE JUDGE KING**

**v.**

**ROB JEFFRIES, Warden,**

**Respondent.**

**OPINION AND ORDER**

On October 3, 2006, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus be dismissed as unexhausted, and that the Court deny petitioner's request for a stay pending exhaustion of his claim that he was denied the effective assistance of counsel due to his attorney's failure to file a motion to suppress his statements to police as coerced. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*.

Petitioner argues that Ohio law did not permit him to obtain documents to support his claim that his confession was coerced. Petitioner takes the position that this Court should therefore conduct an evidentiary hearing so that he may develop the record as to this claim. Petitioner further contends that exhaustion of his ineffective assistance of counsel claim would be futile in any event, and that this Court should therefore address the merits of this unexhausted ineffective assistance of counsel claim.

Petitioner's arguments are unpersuasive. Petitioner does not describe the documents which he was unable to obtain but which, he alleges, would have supported his claim that his confession had been coerced. Further, petitioner never filed a timely petition for post conviction relief or

request for evidentiary hearing in the state courts. The fact that he failed to do so does not render the state court remedy inadequate or ineffective for adjudication of his claim so as to excuse the requirement of exhaustion. *See Turner v. Bagley*, 401 F.3d 78, 724-25 (6<sup>th</sup> Cir. 2005). For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, this Court likewise concludes that the instant action is unexhausted and that a stay pending exhaustion is not appropriate under *Rhines v. Weber*, 125 S.Ct. 1528 (2005).

Petitioner requests in the alternative, to delete his unexhausted claim of ineffective assistance of counsel from this habeas corpus petition and to proceed on the remainder of his habeas corpus petition. *See Objections*. Petitioner's request is hereby **GRANTED**.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For the foregoing reasons, and for the reasons discussed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. Petitioner's request to delete his unexhausted ineffective assistance of counsel claim from this habeas corpus petition and proceed on the remainder of his claims is **GRANTED**.

**IT IS SO ORDERED.**

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s/George C. Smith  
GEORGE C. SMITH  
United States District Judge